

Federal Defenders
OF NEW YORK, INC.

Southern District
52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director

Southern District of New York
Jennifer L. Brown
Attorney-in-Charge

December 5, 2016

BY ECF and EMAIL

Honorable Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Kevin Johnson
15 Cr. 565 (VEC)

Dear Judge Caproni,

We write pursuant to the Court's Show Cause Order of November 30, 2016 to submit the parties' proposed joint redactions to the Defendant's *Daubert* brief ("the brief") and Exhibits in Section (1) below. We are forwarding to the Court by email the brief and Exhibit C with proposed joint redactions indicated by yellow highlighting. On Mr. Johnson's behalf, we make additional requests to redact personal information in Section (2).

(1) Proposed Joint Redactions.

The defense acknowledges responsibility for allowing substantial inconsistency in the way Exhibit C and a previous version of the brief were redacted. Today's jointly-proposed redactions resolve this serious ambiguity. The joint redactions adhere to the Court's July 18, 2016 Protective Order ("the Protective Order") and are also narrowly-tailored to meet the standard set forth in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Because the redactions apply only to the citations to the text of the Forensic Statistical Tool (FST) source code¹, to rare instances of language by which the reader could accurately assess the location of a particular function within the source code², or to other highly confidential materials defined by the Protective Order³, the

¹ See e.g. Brief at p. 45 (directly quoting text of source code).

² See e.g. Ex. C. at 5.6, at ¶ 1. (describing name and specific location of undocumented behavior within the FST source code).

³ See e.g. Ex. C, appendix B. (depicting FST interface in screenshot).

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parties agree that each redaction is necessary to protect the Office of the Chief Medical Examiner's (OCME) copyright.

As they apply to Exhibit C, the proposed joint redactions result in substantial cuts to the amount of material sought to be placed under seal. Applied to Section X of the brief, the parties jointly propose to redact the numerical frequency triggering the undocumented behavior, as this figure derives directly from the source code. Absent this number, Section X does not directly cite the text of the source code, reveal the location of a function within the source code, or otherwise reveal highly confidential material as defined by the Protective Order.

Today's proposal meets the strict *Lugosh* test in that it is narrowly-tailored to safeguard only the interest identified by the Protective Order—OCME's copyright—while also minimizing interference with the public's access to federal court records. Additionally, unlike the previous proposal's internally-inconsistent treatment of redactions to the brief and Exhibit C, today's joint proposal uniformly applies to all documents the standard for redactions derived from the Protective Order. With the submission so redacted, the public record would be minimally constrained and the OCME's copyright reasonably protected.

(2) Additional Redactions.

In addition to the redactions in accordance with the Show Cause and Protective Orders, pursuant to Rule 21.4 of the SDNY ECF Rules and Instructions, Mr. Johnson's counsel seeks approval to redact from the brief, Appendix and Exhibits Mr. Johnson's personal genetic profile. Given the highly specific, personal, and otherwise unobtainable nature of a person's DNA information, we propose to redact his allele chart from the filings. His list of alleles are included in the following documents:

Exhibit C (one line each of Figures C.4 and C.9);

Exhibit P (one line);

Exhibit Q (one line);

Appendix I (one line on page 3, figure 3).

The relevant pages will also be emailed to the Court, with our intended redactions highlighted in green.

Thank you for consideration of these proposals, submitted jointly in Section (1), and on behalf of Mr. Johnson in Section (2).

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Respectfully submitted,



Sylvie Levine
Christopher Flood
Assistant Federal Defenders
212-417-8729

cc: Jason Swergold, Assistant United States Attorney
Stephanie Lake, Assistant United States Attorney

Florence Hutner, General Counsel, OCME
Rebecca Johannesen, Special Counsel, OCME